



**Linda S. Adams**  
Secretary for  
Environmental Protection

## California Regional Water Quality Control Board Central Valley Region

**Karl E. Longley, ScD, P.E., Chair**



**Arnold Schwarzenegger**  
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Dear Lori and Responsible Parties named in the draft Order,

For clarification, the Central Valley Water Board's Prosecution Team will not be calling any outside witnesses in the course of presenting the case for issuance of the Cleanup and Abatement Orders, aside from the individuals listed in the Hearing Procedures. These employees are as follows:

- Joe Karkoski, Acting Assistant Executive Officer
- Joe Mello, Senior Engineering Geologist
- Victor Izzo, Senior Engineering Geologist
- Jeffrey Huggins, Water Resources Control Engineer
- They will be advised by Patrick Pulupa, Staff Counsel

In terms of legal analysis, no staff report has been generated to accompany the proposed Orders. The basic allegations, that the dischargers had a possessory interest in the parcels that are the subject of the proposed Order sufficient to allow them to control the discharge, and that an ongoing discharge is and was occurring, are spelled out in the draft cleanup and abatement Order.

Specifically, Finding No. 5 of the draft Order states that:

5. The parties listed in Attachment B, which is incorporated herein and made part of this Order, are known landowners, operators, or leaseholders of the Mine site as determined by Central Valley Water Board staff's review of property records from the Colusa County Records Office. All the parties named in this order either owned the site at the time when a discharge of mining waste into waters of the state took place, or operated the mine, thus facilitating the discharge of mining waste into waters of the state. The parties named in this Order as Dischargers are known to presently exist or have viable successor.

Finding No. 7 of the draft Order states that:

7. Copper, mercury, sulphur, and gold were all discovered in the District in the late 1800s, and the Mines were developed during that period. This information is described in the *CalFed-Cache Creek Study, Task 5C2: Final Report. Final Engineering Evaluation and Cost Analysis for the Sulphur Creek Mining District*, prepared by Tetra Tech EM Inc., September 2003 (hereafter CalFed Report).

The "CalFed Report," which was developed for the adoption of the TMDL for this waterbody, is relied upon for numerous findings that follow, and generally describes the waste piles and adits

that are contributing mercury loading from Colusa County Assessor's Parcel Numbers 018-100-002-000, 018-100-003-000, and 018-100-004-000.

These findings form the basis for requiring the responsible parties to take actions to clean up or remediate the wastes that are eroding into the watershed. The records from the Colusa County Recorder's office, which document the interests that the various dischargers have held vis-à-vis the parcels in question, have been in the files of the Central Valley Water Board for months. More specific analysis, including discharger-specific responses, will be supplied in the Central Valley Water Board's response to the comments that have been solicited from the dischargers. The responses to the discharger's comments will be submitted in advance of the hearing (by the rebuttal deadline).

Many responsible parties submitted their comments by July 1, which was the date that the Board's Prosecution Team initially proposed for the submittal of comments (when Board staff still anticipated that the Orders would be issued by the Executive Officer without holding a hearing). The most common issue that came up in these comments, and the issue that the Prosecution team is prepared to address in our rebuttal, is the issue of whether so-called "passive migration" constitutes a discharge that would make a former landowner responsible for cleanup.

The State Water Board previously addressed this issue in Water Quality Order 86-02, *In the Matter of the Petition of Zoecon Corporation*, finding that the movement of waste to waters of the State during the time that the parcel was owned by the petitioner was sufficient to attach liability under California Water Code section 13304.

Patrick Pulupa, Staff Counsel  
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Office of Chief Counsel